

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

COLUMBIA RIVERKEEPER, IDAHO )  
RIVERS UNITED, SNAKE RIVER )  
WATERKEEPER, PACIFIC COAST )  
FEDERATION OF FISHERMEN'S )  
ASSOCIATIONS, and THE INSTITUTE )  
FOR FISHERIES RESOURCES, )  
Plaintiffs, )  
v. )  
SCOTT PRUITT, et al. )  
Defendants. )  
No. 2:17-cv-00289-RSM  
**DECLARATION OF MILES  
JOHNSON**

I, MILES JOHNSON, state and declare as follows:

1. My name is Miles Johnson, and I am co-counsel for Columbia Riverkeeper in this case. I make this declaration based on my own personal knowledge to describe the sources of the documents in Plaintiff's possession that are referenced in Plaintiffs' opening brief as Exhibits 1

2. The following exhibits are true and correct copies of published scientific studies,

<sup>1</sup> The court should consider these documents because they are relevant to the case and EPA has agreed that “this matter can be decided on cross-motions for summary judgment as supported by relevant documents in the possession of the parties or by affidavits and/or declarations by the parties’ employees and members.” *See Dkt. # 14, p. 3 (Jun. 6, 2017).*

1 scientific review papers, and regulatory documents written by employees of the Environmental  
2 Protection Agency (“EPA”), other federal agencies, and independent scientific researchers  
3 regarding Columbia River basin salmonids and water temperature. Where doing so saved space  
4 and did not compromise the meaning or integrity of the document, I redacted pages from some of  
5 the following documents. I obtained these documents by downloading them from the respective  
6 agencies’ and scientists’ websites.

- 7 • Exhibit 1: U.S. Environmental Protection Agency, *Guidance for Water*  
8 *Quality-based Decisions: The TMDL Process* (1991).
- 9 • Exhibit 2: Northwest Power and Conservation Council, *Return to the River*  
10 (2000).
- 11 • Exhibit 3: U.S. Environmental Protection Agency, *Summary of Technical*  
12 *Literature Examining the Physiological Effects of Temperature on Salmonids*  
13 (2001).
- 14 • Exhibit 4: U.S. Environmental Protection Agency, *EPA Region 10 Guidance for*  
15 *Pacific Northwest State and Tribal Temperature Water Quality Standards* (2003).
- 16 • Exhibit 5: U.S. Environmental Protection Agency, *EPA Region 10 Climate*  
17 *Change and TMDL Pilot Research Plan* (2013).
- 18 • Exhibit 6: Wild Fish Conservancy, *2015 Temperature and Flow Conditions of*  
19 *Pacific Northwest Rivers: A Water Quality and Quantity Crisis and the Need for*  
20 *Fishery Closures and the Development of a NOAA Approved Drought*  
21 *Management Plan for the Protection of ESA-listed Salmonids* (2015).
- 22 • Exhibit 7: Northwest Fisheries Science Center, *Status Review Update for Pacific*  
23 *Salmon and Steelhead Listed Under the Endangered Species Act: Pacific*  
24 *Northwest* (2015).
- 25 • Exhibit 8: National Marine Fisheries Service, *Biological Opinion on the EPA’s*  
26 *Proposed Approval of Certain Oregon Water Quality Standards for Temperature*  
27 *and Intergravel Dissolved Oxygen* (2015).
- 28 • Exhibit 9: Fish Passage Center, *Requested Data Summaries and Actions*  
29 *Regarding Sockeye Adult Fish Passage and Water Temperature Issues in the*  
30 *Columbia and Snake Rivers* (2015).

- 1     ● Exhibit 10: Fish Passage Center, *Requested Data Summaries Regarding Summer*  
2     *Chinook Adult Fish Passage and Water Temperature in the Columbia and Snake*  
3     *River* (2016).
- 4     ● Exhibit 11: Fish Passage Center, *The Effect of Water Temperature on Steelhead*  
5     *Upstream Passage* (2016).
- 6     ● Exhibit 12: U.S. Environmental Protection Agency, *Comments on NOAA*  
7     *Fisheries 2015 Adult Sockeye Salmon Passage April 2016 Draft Report* (2016).
- 8     ● Exhibit 13: Fish Passage Center, *Review of April 2016 Draft of NOAA Fisheries*  
9     *Report 2015 Sockeye Salmon Passage Report* (2016).
- 10    ● Exhibit 14: National Marine Fisheries Service, *2015 Adult Sockeye Salmon*  
11    *Passage Report* (2016).

12       3. The following exhibits are true and correct copies of documents that were in the  
13     possession of EPA Region 10. I received these documents from EPA in response to a Freedom of  
14     Information Act request that I sent to EPA on behalf of Columbia Riverkeeper on August 22,  
15     2016.

- 16     ● Exhibit 15: Memorandum of Agreement, Columbia/Snake Rivers Total Maximum  
17     Daily Load for Total Dissolved Gas and Temperature (Oct. 16, 2000).
- 18     ● Exhibit 16: U.S. Environmental Protection Agency, *All Key Dates Columbia*  
19     *Temperature TMDL* (Apr. 16, 2001).
- 20     ● Exhibit 17: U.S. Environmental Protection Agency, *Work Plan for*  
21     *Columbia/Snake Temperature TMDLs* (Apr. 16, 2001).
- 22     ● Exhibit 18: Washington Department of Ecology Letter to EPA Region 10, (Sep. 4,  
23     2001).
- 24     ● Exhibit 19: Idaho Department of Environmental Quality Letter to EPA Region 10  
   (Sept. 17, 2001).
- Exhibit 20: Oregon Department of Environmental Quality Letter to EPA Region  
   10 Regarding “Columbia/Snake Rivers TMDL” (Oct. 4, 2001).
- Exhibit 21: EPA Region 10 Letter to Jay Minthorn, Chairman, Columbia River  
   Inter-Tribal Fish Commission (Jan. 15, 2002).

- Exhibit 22: U.S. Environmental Protection Agency, *Columbia/Snake Rivers Preliminary Draft Temperature TMDL* (Jul. 2003).
- Exhibit 23: Washington Department of Ecology and Oregon Department of Environmental Quality Letter to U.S. Council on Environmental Quality (Feb. 12, 2003).
- Exhibit 24: U.S. Environmental Protection Agency, *EPA Strategy For Consultation and Coordination with Indian Tribal Governments For Completing Mainstem Columbia River and Snake River TMDLs* (Mar. 18, 2003).
- Exhibit 25: U.S. Environmental Protection Agency, *Modeling Background and Issues: Assessment of Impacts of Rocky Reach Dam* (Sep. 9, 2004).
- Exhibit 26: U.S. Environmental Protection Agency Letter to U.S. Army Corps of Engineers (Feb. 20, 2007).

4. The following exhibits are true and correct copies of documents that I  
5 downloaded from Ecology and DEQ's websites, respectively.

- Exhibit 27: Oregon Department of Environmental Quality, *Oregon's 2012 TMDL Priorities and Schedule* (Sep. 30, 2014).
- Exhibit 28: Washington Department of Ecology, *Water Quality Improvement Projects (TMDLs), Columbia River Projects webpage* (downloaded on Aug. 21, 2017).

5. The following exhibits are true and correct copies of email communications  
6 between me and representatives of Ecology and DEQ, respectively, reflecting the absence of any  
7 plans by the states to prepare TMDLs for the Columbia and Snake rivers.

- Exhibit 29: Emails exchanged between Miles Johnson, Columbia Riverkeeper, and Melissa Gildersleeve, Ecology (Jul. 5, 2015).
- Exhibit 30: Emails exchanged between Miles Johnson, Columbia Riverkeeper, and Paula Calvert, DEQ (Jul. 5, 2015).

6. In addition to reviewing the above documents, I also supervised Columbia  
7 Riverkeeper's research into the causes of, and potential solutions to, water temperature problems  
8 in the Columbia and Snake Rivers. In 2016, Columbia Riverkeeper retained a computer  
9

1 modeling expert, Mathew Shultz, to EPA's "RBM10" computer model (the same model EPA  
2 used to prepare the 2003 Draft TMDL) to model water temperature in the Columbia and Snake  
3 Rivers under various climatological and flow scenarios. Under my direction, Mr. Shultz updated  
4 RBM10 with modern meteorological data, re-calibrated the model, and successfully performed  
5 dozens of model runs that provided Columbia Riverkeeper with substantial new information  
6 about temperature in the Columbia and Snake Rivers. Mr. Shultz completed all of these tasks  
7 within roughly three months during the summer of 2016. While Mr. Shultz possesses significant  
8 technical and scientific expertise, neither Mr. Shultz nor I had ever used EPA's RBM10 model  
9 before we began this project.

10 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true  
11 and correct to the best of my knowledge.

12 Executed this 29<sup>th</sup> day of August, 2017, at Hood River, Oregon.

13  
14 /s/ Miles Johnson  
15 MILES JOHNSON  
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## CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2017, I electronically filed the foregoing Declaration of Miles Johnson and all accompanying exhibits with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Bryan Hurlbutt  
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Dated: August 30, 2017

/s/ Bryan Hurlbutt  
BRYAN HURLBUTT